IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2877 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KHEMSING HALSING DABHI (THAKOR)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2877 of 2002

MR HD CHUDASAMA for Petitioner No. 1

MS HANSA PUNANI AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 15/04/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 21/7/2001 passed by the District Magistrate, Banaskantha at Palanpur and he has

been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the impugned detention order relying upon the solitary offence registered before the Vadgam Police Station vide CR NO.I-49 of 2001 on 30/6/2001. He has further argued that in the said offence the petitioner was arrested on 2/7/2001 and thereafter, he was released on bail, but the detaining authority has not supplied the copies of the bail application and bail order. According to the learned advocate for the petitioner, the bail application and bail order being vital and important document, could have been supplied by the detaining authority along with the grounds of detention, but the detaining authority has failed to supply the said important documents, and thereby the detaining authority has prevented the petitioner from making an effective representation. Even no affidavit has been filed by the State authority. In support of his arguments, learned advocate for the petitioner has relied upon the judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 in which this court has held as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

4. Since neither the material documents have not been supplied by the detaining authority to the petitioner along with the grounds of detention, nor affidavit has been filed either by the detaining

authority or by the State authority explaining the action of the detaining authority for not providing the material documents along with the grounds of detention, the petitioner is prevented from making an effective representation and hence the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 21/7/2001 passed against the detenu is hereby quashed. The detenu namely Khemsing Halsing Dabhi, Thakor is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

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